

Court Document Not an Official Court Document Not an Official Court Document Not an Official Court Document
IN THE CIRCUIT COURT OF SAINT LOUIS CITY
STATE OF MISSOURI

Official Court Document Not an Official Court Document Not an Official Court Document
FOUND BY THE POUND, LLC)
(Not an Official Court Document Not an Official Court Document Not an Official Court Document
Plaintiff,) Case No.
Document Not an Official Court Document Not an Official Court Document Not an Official Court Document
vs.) Division:
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FOUND FASHION, LLC,)
an Official Court Document Not an Official Court Document Not an Official Court Document
Serve Registered Agent,)
at:)
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Defendant.)

**PETITION FOR PRELIMINARY AND
PERMANENT INJUNCTION AND DAMAGES**

Plaintiff Found By The Pound, LLC, by and through its attorneys, Riezman Berger, P.C, and
for its cause of action against Defendant Found Fashion, LLC, states as follows:

Parties and Jurisdiction

1. Plaintiff is a limited liability company duly organized and existing according to law. It
is engaged in the business of operating retail thrift stores featuring mainly clothing.

2. Defendant has a business office in Lake St. Louis, situated in St. Charles County,
Missouri.

3. Upon information and belief, Defendant has its place of business in this jurisdiction,
at [REDACTED]

4. Plaintiff has three stores, one in St. Louis City and two in St. Louis County, and
operates its business online as well.

5. This Court has jurisdiction over the subject matter herein because the events giving rise to the petition occurred in the State of Missouri and the damages suffered as a result of the acts and omissions of the defendant alleged in the petition have been suffered in the State of Missouri.

6. Venue is proper in this Court pursuant to RSMO 508.010

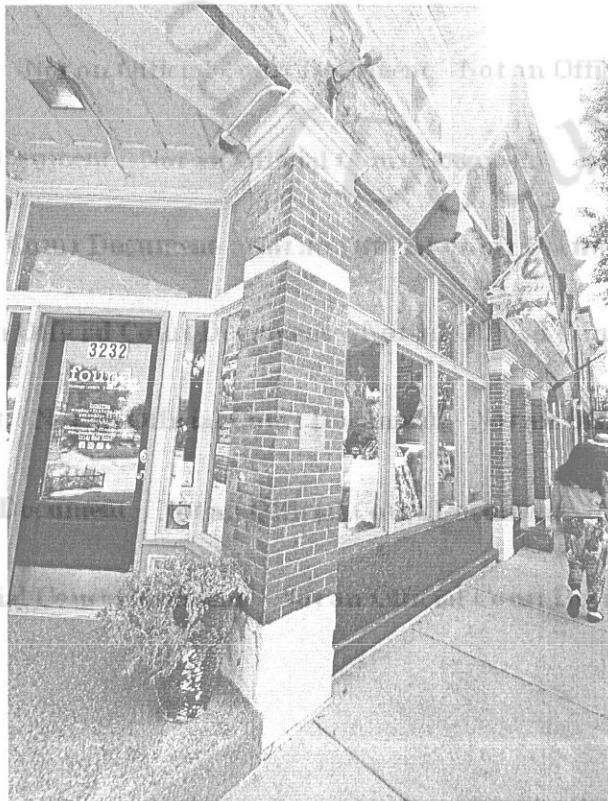
Common Allegations Applicable to All Counts

7. Plaintiff employs several marks in order to distinguish its businesses in the minds of the relevant public for thrift store services, from its competitors such as Defendant.

8. These marks all involve a common distinctive element: the word "FOUND" in all lowercase.

9. Thus, there exists the following door signs displayed by Plaintiff, in the St. Louis area.

a. South Grand in the City:



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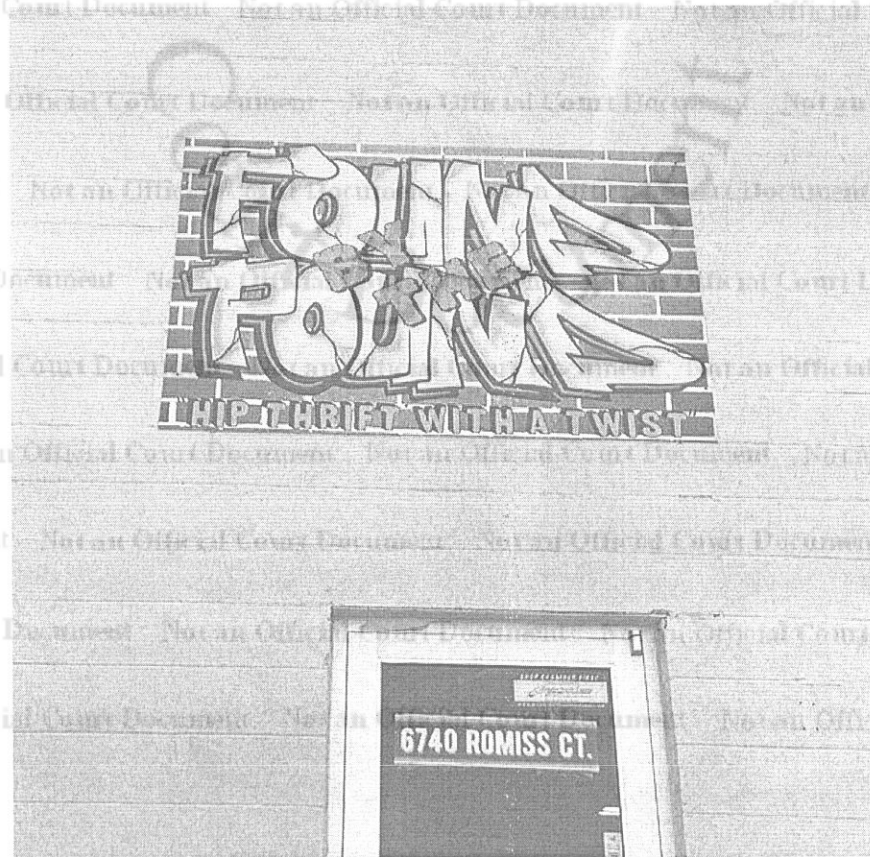
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c. Plaintiff's Berkeley store, which uniquely sells its thrift items by weight:



10. Plaintiff operates an online store on Etsy which is tied in with the above physical locations in St. Louis:



11. The above marks, affixed to the services of Plaintiff, operate as a unit to reinforce the common element FOUND as a signifier of the superior thrift store services originating in Plaintiff (hereinafter, "The Found Family of Marks").

12. The Berkeley store opened in 2016. The So. Grand store opened in 2017. The Delmar store opened in 2021. The [REDACTED] online store opened in 2017.

13. In addition, a [REDACTED] (UK-based) online store opened in 2022.

14. The Found Family of Marks has been used continuously in commerce since the above dates and continues to be used in commerce through today.

15. Plaintiff has sold [REDACTED] in vintage clothing since inception.

16. Plaintiff has spent [REDACTED] in marketing and advertising to promote The Found Family of Marks.

17. According to a traffic map for 6325 Delmar prepared by industrial research and mapping firm [REDACTED], an average of 11,767 vehicles per day pass the location with the above signage. This is in addition to foot traffic at the popular Delmar Loop shopping district.

18. According to a traffic map for 3232 So. Grand prepared by industrial research and mapping firm [REDACTED], an average of between 19,352 and 27,715 vehicles per day pass the location with the above signage. This is in addition to foot traffic at the popular South Grand shopping district.

19. Plaintiff's So. Grand store is in fact a point of pride with the South Grand District



Shops

South Grand is proud of our eclectic shops that pride themselves on sustainability from a used bookstore to an upcycle shop and vintage furniture and clothing to recycled treasures from across the ocean.

Just click on one of the four categories below to see our businesses:

(See <https://southgrand.org/business-directory/shops/>)

20. In the most recent month with figures available, Plaintiff's So. Grand sold 1,498 items.

21. In the most recent month with figures available, Delmar sold 1,831 items.

22. Since 2021, at least 37,000 pieces of clothing have gone “out the door” of Plaintiff’s shops with “FOUND” retail tags on them, further ingraining that signifier in the minds of the relevant public.

23. Plaintiff has sold approximately 5,000 totes with “found. Vintage” branding.

24. As a promotional item, Plaintiff has circulated 2500 “found” stickers.

25. To date, the online stores have sold 525 pieces.

26. The Found Family of Marks are reinforced by social media.

27. The Found Family of Marks have a combined Instagram following of 13,000.

28. The Found Family of Marks have a Facebook following of 11,000.

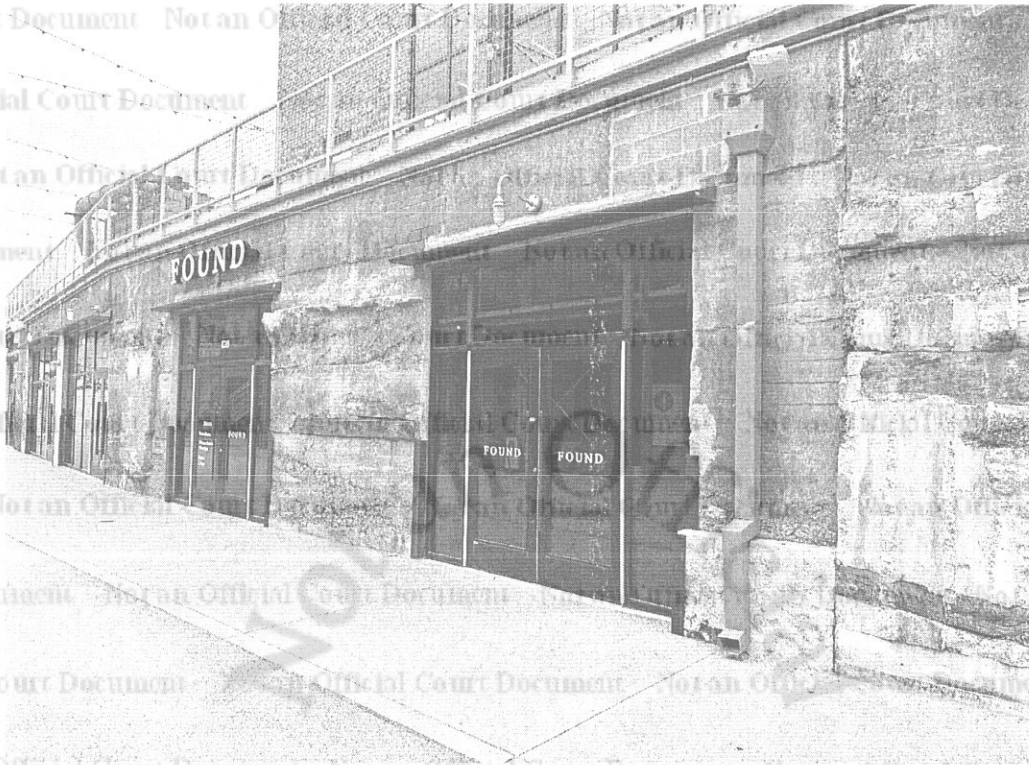
29. The Found Family of Marks have a TikTok following of 14,000.

30. In addition, as a token example of its social media impressions (not just followers), Plaintiff has received 140,000 likes for its posts on TikTok.

31. The Found Family of Marks have gained favorable public acceptance and recognition and secondary meaning.

32. As a result of the foregoing, The Found Family of Marks have become an asset of incalculable value to Plaintiff as the marks designating the source and origin of the highest quality specialized and “elevated” thrift store services. As a further result of the foregoing, Plaintiff has federal and common law rights in and to The Found Family of Marks.

33. At least as early as September 2023, Defendant began operating the above-referenced clothing store, with the following signage:



34. "Actual confusion" ensued immediately as numerous customers began congratulating Plaintiff for opening a fourth store in the trendy City Foundry.

35. Defendant's FOUND store appeared on City Foundry's website at least as early as October 2, 2023. See <https://www.cityfoundrystl.com/directory/found>.

36. At that link, Defendant advertises that "Found specializes in ready to wear apparel, footwear and accessories" and has photographs of the wares inside Defendant's store such as this one:



37. In September 2023, Riezman Berger attorney R. Emmett McAuliffe called Defendant's attorney-of-record, Rosemarie Heidenreich Parker, to alert Defendant to the infringement. Said attorney denied that there was infringement. ("Exhibit A"). A subsequent phone call and exchange of views between attorneys did not change Defendant's position or induce any action on the part of Defendant.

COUNT I

(Federal Common Law Trademark Infringement and Unfair Competition)

38. Plaintiff incorporates by reference as if fully rewritten herein the allegations contained in paragraphs 1 through 36 of this Petition.

39. Plaintiff has not consented to and have not authorized Defendant's use of FOUND (the "INFRINGEMENT MARK"); nor has Plaintiff sponsored, endorsed or approved the use of the INFRINGEMENT MARK and/or the services offered by Defendant thereunder.

40. Defendant's INFRINGEMENT MARK is identical to and/or similar to The Found Family of Marks

41. The use of The Found Family of Marks by Plaintiff predates the earliest claims of Defendant.

42. Defendant is now using, marketing and displaying the INFRINGEMENT MARK in Missouri and in interstate commerce contrary to the rights of Plaintiff.

43. The actions of Defendant complained of herein are likely to create confusion, mistake and deception of consumers into believing that Plaintiff has authorized, licensed, sponsored or otherwise associated the INFRINGEMENT MARK with its common law trademark rights in The Found Family of Marks

44. The acts and conduct of Defendant complained of herein constitute willful and deliberate misuse and infringement of Plaintiff's common law rights in The Found Family of Marks and will continue in willful and wanton disregard of Plaintiff's valuable rights.

45. The foregoing acts of Defendant including using The Found Family of Marks without authorization, license or consent and using the INFRINGING MARK are in violation of the common law of the State of Missouri.

46. By reason of the foregoing, Plaintiff has been damaged by Defendant's willful use of The Found Family of Marks and the INFRINGING MARK in the manner set for above and will continue to be damaged unless Defendant are enjoined from using The Found Family of Marks and the INFRINGING MARK.

47. Defendant's unauthorized use of The Found Family of Marks and the INFRINGING MARK in interstate commerce and in Missouri in connection with the promotion and/or offering of Defendant's services as a retail clothing store constitutes a false designation of origin, a false and/or misleading description of fact, and/or a false and misleading representation of fact which constitutes unfair competition and an infringement of Plaintiff's trademark rights in and to The Found Family of Marks, and is likely to cause confusion and mistake and/or deception as to the affiliation, connection, or association of Defendant with Plaintiff and/or as to the origin, sponsorship, or approval of Defendant's services by Plaintiff.

48. As a direct, foreseeable and proximate result of Defendant's infringing conduct, Plaintiff has suffered and will continue to suffer irreparable injury to its business reputation and goodwill for which no adequate remedy exists at law and damages in an amount not fully determined.

49. Plaintiff has a substantial likelihood of success stemming from a demonstrably clear legal right, bolstered by actual confusion, and Plaintiff will be irreparably injured by the continued acts of Defendant, unless such acts are enjoined.

50. Plaintiff has no adequate remedy at law.

WHEREFORE, in consideration of the foregoing, Plaintiff prays that the Court enter judgment on Count I in its favor and against Defendant as follows:

a. For judgment that The Found Family of Marks have been and continue to be infringed by Defendant;

b. For judgment that The Found Family of Marks have been and continue to be diluted by Defendant;

c. A preliminary and permanent injunction against Defendant enjoining and restraining Defendant, its officers, agents, employees, and persons acting in concert with Defendant, from using The Found Family of Marks and the INFRINGING MARK or any confusingly similar marks in any way or using any word, words, phrases, symbols, logos, or any combination of words or symbols that would or could create a likelihood of confusion, mistake or deception therewith, including without limitation, The Found Family of Marks and the INFRINGING MARK in connection with the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing or developing of Defendant's business and services;

d. A preliminary and permanent injunction against Defendant enjoining Defendant, its officers, agents, employees, and persons acting in concert with Defendant, from infringing The Found Family of Marks and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from its misappropriation of the rights of Plaintiff to The Found Family of Marks;

e. A preliminary and permanent injunction against Defendant to recall from all of its officers, agents, employees, and all persons acting in concert with Defendant, including New+Found company d/b/a the City Foundry STL, any material, whether digital or not, containing The Found Family of Marks and the INFRINGING MARK in any way and any word, words, phrases, symbols, logos, any combination of words or symbols that would create a likelihood of confusion, mistake and/or deception therewith including, without limitation, the INFRINGING MARK, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing or developing of Defendant's business and services;

f. Requiring Defendant to destroy, at its sole and exclusive cost, all materials in its possession or under its control that infringe The Found Family of Marks and that display or refer to the INFRINGING MARK;

g. For an Order requiring Defendant to cancel, nullify and/or extinguish the INFRINGING MARK including, without limitation, canceling, forfeiting or withdrawing all registrations of the INFRINGING MARK from the Secretary of State of Missouri and/or any other registration made thereof;

h. For all actual damages sustained by Plaintiff as the result of Defendant's acts of infringement and/or dilution, together with prejudgment interest thereon, according to proof;

i. For an accounting of the profits of Defendant resulting from its acts of infringement and/or dilution;

j. For an award of attorneys' fees;

k. For Plaintiff's costs of suit, including their reasonable litigation expenses;

l. For an award of compensatory damages suffered by Plaintiff

m. according to proof;

n. For an award of punitive damages in amount sufficient to deter and punish Defendant, as may be permitted by law or in the discretion of the Court;

o. For an award of interest on the compensatory damages at the highest rate allowed by law;

p. Requiring Defendant to file with this Court and to serve upon Plaintiff a report, in writing and under oath, setting forth in detail the manner and form in which Defendant has complied with the terms of the Court's orders and injunction; and

q. Granting Plaintiff such additional, other or further relief as the Court deems just and proper in the premises.

COUNT II

(Dilution Under §417.061, R.S.Mo.)

51. Plaintiff incorporates by reference as if fully rewritten herein the allegations contained in paragraphs 1 through 36 of this Petition.

52. The Found Family of Marks are valid at common law.

53. The Found Family of Marks are distinctive.

54. Defendant's use of The Marks and the INFRINGING MARK have caused and continues to cause dilution of the distinctive quality of The Found Family of Marks in violation of §417.061, R.S.Mo.

55. The aforesaid wrongful acts of Defendant have caused irreparable harm and injury to Plaintiff and, unless this Court enjoins and restrains Defendant from further use of The Found Family of Marks and the INFRINGING MARK, Plaintiff will continue to suffer irreparable injury from which it has no adequate remedy at law.

56. As a direct, foreseeable and proximate result of Defendant's wrongful conduct, Plaintiff has suffered and is suffering diminution in the value of and injury to the distinctiveness of The Found Family of Marks, Plaintiff has been injured in its business and reputation, has been required to employ attorneys, and has otherwise been damaged in an amount not fully determined.

WHEREFORE, in consideration of the foregoing, Plaintiff prays that the Court enter judgment on Count II in its favor and against Defendant as follows:

- a. For judgment that The Found Family of Marks have been and continue to be infringed by Defendant;
- b. For judgment that The Found Family of Marks have been and continue to be diluted by Defendant;
- c. A preliminary and permanent injunction against Defendant enjoining and restraining Defendant, its officers, agents, employees, and persons acting in concert with Defendant, from using The Found Family of Marks and the INFRINGING MARK or any confusingly similar marks in any way or using any word, words, phrases, symbols, logos, or any combination of words or symbols that would or could create a likelihood of confusion, mistake or deception therewith, including without limitation, The Found Family of Marks and the INFRINGING MARK in connection with the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing or developing of Defendant's business and services;
- d. A preliminary and permanent injunction against Defendant enjoining Defendant, its officers, agents, employees, and persons acting in concert with Defendant, from infringing The Found Family of Marks and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from its misappropriation of the rights of Plaintiff to The Found Family of Marks;

e. A preliminary and permanent injunction against Defendant to recall from all of its officers, agents, employees, and all persons acting in concert with Defendant, any material containing The Found Family of Marks and the INFRINGING MARK in any way and any word, words, phrases, symbols, logos, any combination of words or symbols that would create a likelihood of confusion, mistake and/or deception therewith including, without limitation, the INFRINGING MARK, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing or developing of Defendant's business and services;

f. Requiring Defendant to destroy, at its sole and exclusive cost, all materials in its possession or under its control that infringe The Found Family of Marks and that display or refer to the INFRINGING MARK;

g. For an Order requiring Defendant to cancel, nullify and/or extinguish the INFRINGING MARK including, without limitation, canceling, forfeiting or withdrawing all registrations of the INFRINGING MARK from the Secretary of State of Missouri and/or any other registration made thereof;

h. For all actual damages sustained by Plaintiff as the result of Defendant's acts of infringement and/or dilution, together with prejudgment interest thereon, according to proof;

i. For an accounting of the profits of Defendant resulting from its acts of infringement and/or dilution;

j. For an award of attorneys' fees;

k. For Plaintiff's costs of suit, including their reasonable litigation expenses;

l. For an award of compensatory damages suffered by Plaintiff according to proof;

m. For an award of punitive damages in amount sufficient to deter and punish

Defendant, as may be permitted by law or in the discretion of the Court;

n. For an award of interest on the compensatory damages at the highest rate allowed by law;

o. Requiring Defendant to file with this Court and to serve upon Plaintiff a report, in writing and under oath, setting forth in detail the manner and form in which Defendant has complied with the terms of the Court's orders and injunction; and

p. Granting Plaintiff such additional, other or further relief as the Court deems just and proper in the premises.

Respectfully Submitted,

RIEZMAN BERGER, P.C.

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